Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90

COMMENTS ON THE FURTHER NOTICE OF PROPOSED RULEMAKING FOR PHASE I INCREMENTAL SUPPORT OF THE CONNECT AMERICA FUND



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SUMMARY

The Phase I incremental support program is a program limited in time and reach.

Because of its transitional nature, the Commission adopted a "simplified, interim approach" to distributing incremental support. This approach does not "identify the precise cost of deploying broadband to any particular location," but instead identifies "an appropriate standard to spur immediate deployment to as many unserved locations as possible, given [the Commission's] budget constraint." As the Commission has stated, the program has been successful. Frontier and other price cap LECs accepted all of the support for which they were eligible, and other price cap LECs accepted partial amounts. Even though other price cap LECs rejected all support, the Commission designed the program "to reach a significant number of relatively low-cost locations, not to ensure that the entire \$300 million offered for Phase I would be accepted."

With the funding allocated and accepted last year, the program's stated objective is in the process of being achieved. Until that is no longer the case, the Commission need not substantially alter the program as proposed in the FNPRM.

The Commission also should recognize that the price cap LECs have provided myriad reasons for rejecting support, some of which have nothing to do with the need to expand the number of areas eligible to be served, to obtain additional support beyond \$775 per location, or to use support to deploy second-mile fiber. AT&T, for instance, has stated publicly that it would not upgrade its rural plant to U-verse technology and instead rely on 4G LTE. Verizon's CEO told the investment community that it was moving to rely on wireless deployments in rural areas to provide broadband service. As for CenturyLink, its waiver petition focused on its claim that census blocks were inaccurately determined to be "served." Only two of the "mainland" carriers — Windstream and Fairpoint — filed waiver petitions arguing that the amount of support per location was insufficient. In sum, there is no consensus among the price cap LECs as to

shortcomings with the program, and, consequently, changes to these incremental support rules proposed in the FNPRM geared to address the concerns raised by some carriers are likely to have the unfortunate effect of providing additional and excessive support for other carriers where in fact none is needed.

To determine whether price cap LECs in fact need changes in the rules to use incremental support to deploy broadband to unserved locations, ACA examined the pool of eligible lower cost unserved locations in price cap LEC territories. ACA's analysis is based on the geographic and performance data in the National Broadband Map and the CQBAT cost model submitted by the ABC Coalition (price cap LECs). As a result of this analysis, ACA determined that for several price cap LECs there are more than a sufficient number of lower cost locations that are not served with broadband service at speeds of 768/200 kbps for which they would have a sound commercial rationale to use their allocation of incremental support of \$775 per location. For these LECs, there is no basis for the Commission to alter its rules.

However, for several other price cap LECs, ACA determined they appear to have an insufficient number of lower cost locations that are not served with broadband service at speeds of 768/200 kbps. ACA proposes that these price cap LECs be able to use Phase I incremental support to deploy broadband to locations in areas that do not currently receive 4/1 Mbps broadband service but only after the LEC uses its support to deploy broadband to its remaining lower cost unserved locations with at most 768/200 kbps service. This will ensure that these price cap LECs achieve the program's objective of providing service to their unserved locations most in need of broadband service. ACA's proposed expansion of the eligible locations also will further the Commission's objective of providing an immediate spur to broadband deployment without establishing new and more complex rules. Finally, by requiring lower cost unserved

locations with 768/200 kbps to be served first, ACA's approach helps ensure that support is distributed efficiently to each price cap LEC.

Additionally, with ACA's proposal, since each price cap LEC will now have more than a sufficient number of lower cost unserved locations, the Commission does not need to increase the amount of support per location nor does it need to establish a new second-mile fiber component to the program. In any event, because these two policy proposals provide imprecise estimates of cost and required support and thus distribute support inefficiently, they should be rejected.

As for distribution of "leftover" 2012 Phase I incremental support, the Commission should not add these funds to any 2013 distribution. Rather, the Commission should adopt one of its alternative proposals: either add the amount to Phase II distribution or return the money by lowering the contribution rate paid by consumers. ACA's rationale is premised primarily on the fact that under Phase II, support will be distributed more efficiently through use of a cost model and a competitive bidding regime.

Finally, regardless of whether the Commission amends its Phase I rules, it should clarify in this proceeding the interplay among Phase I incremental support, the Phase I obligation to use frozen legacy support to deploy broadband-capable networks, and Phase II "five-year" support to ensure that price cap LECs cannot "double-dip" in utilizing support for unserved locations from more than one program.

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COMMENTS OF THE AMERICAN CABLE ASSOCIATION ON THE FURTHER NOTICE OF PROPOSED RULEMAKING FOR PHASE I INCREMENTAL SUPPORT OF THE CONNECT AMERICA FUND

The American Cable Association ("ACA") respectfully submits these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") on potential modifications to the rules governing the award of Connect America Fund ("CAF") Phase I incremental support to price cap local exchange carriers ("LECs"). In the *Connect America Fund Order*, the Commission established the Phase I incremental support program as a "transitional distribution mechanism" that would provide up to \$300 million of additional support to price cap LECs as "an immediate boost to broadband deployment in areas that are unserved by any broadband provider" while the Commission was developing the Phase II support regime. Since the

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See Connect America Fund, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138 (rel. Nov. 19, 2012). ACA notes that on January 24, 2013 it filed reply comments on Public Notices DA 12- 1961 and DA 12-2001, updating and correcting the list of unserved areas on the National Broadband Map for Connect America Phase I incremental support. In those comments, ACA addressed various issues raised in the FNPRM, including the adoption of a formal challenge process. It incorporates those comments herein by reference. See Reply Comments of the American Cable Association on Public Notices DA 12-1961 and DA 12-2001, Updating and Correcting the List of Unserved Areas on the National Broadband Map for Connect America Phase I Incremental Support, WC Docket No. 10-90 (Jan. 24, 2013).

² See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 18, 2011) ("Connect America Fund Order").

³ Connect America Fund Order, ¶132.

⁴ *Id.*, ¶137.

Commission has yet to adopt the Phase II regime, it is planning to award additional Phase I incremental support in 2013. The FNPRM sets forth a series of proposals by which the Commission may amend the rules for how support would be awarded. ACA has participated extensively in the Commission's proceedings addressing the CAF Phase I program, and it provides its views on the Commission's proposals in these comments.⁶

I. INTRODUCTION AND OVERVIEW

The Phase I incremental support program is a program limited in time and reach.

Because of its transitional nature, the Commission adopted a "simplified, interim approach" to distributing incremental support. This approach does not "identify the precise cost of deploying broadband to any particular location," but instead identifies "an appropriate standard to spur immediate deployment to as many unserved locations as possible, given [the Commission's] budget constraint." As the Commission notes in the FNPRM, the program has been successful. Frontier and other price cap LECs accepted all of the support for which they were eligible, and

⁵ See id., ¶132.

ACA notes that on December 14, 2012, it joined with other associations representing competitive local providers and individual competitive providers in a letter to the Commission expressing concern that the proposals contained in the FNPRM would not distribute funding efficiently and, as such, represented "a giant step backwards in the Commission's efforts to modernize the universal service high-cost program and should not be adopted as proposed." *See Ex Parte* Letter from Ross J. Lieberman, American Cable Association, Rebecca Thompson, Competitive Carriers Association, Steven F. Morris, National Cable & Telecommunications Association, Matt Larsen, Wireless Internet Service Providers Association, Jeffrey H. Blum, Dish Network L.L.C., Dean A. Manson, EchoStar Corporation, and Michael Rapelyea, ViaSat, Inc. to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 10-90, at 1 (Dec. 14, 2012).

⁷ Connect America Fund Order, ¶134.

Id., ¶139. ACA notes that the Commission used the CQBAT model in helping determine the cost of deploying broadband to unserved locations and establish the support amount of \$775 per location. See id., ¶142.

See FNPRM, ¶7.

other price cap LECs accepted partial amounts.¹⁰ Even though other price cap LECs rejected all support,¹¹ the Commission designed the program "to reach a significant number of relatively low-cost locations, not to ensure that the entire \$300 million offered for Phase I would be accepted."¹² With the funding allocated and accepted last year, the program's stated objective is in the process of being achieved.¹³ Until that is no longer the case, the Commission need not

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¹⁰ Frontier Communications accepted the entire allotted amount of \$71.9 million, Alaska Communications Systems Group, Inc. accepted the entire \$4.1 million, Consolidated Communications Inc. accepted the entire \$421,247, and Hawaiian Telecom accepted the entire \$402,171. See Letter from Michael Golob, Frontier Communications, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012); Letter from Amy Gardner, Alaska Communications Systems Group, Inc., to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012); Letter from Paul Feldman, Counsel for Consolidated Communications, Inc., to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012); and Letter from Stephen P. Golden, Hawaiian Telecom, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 23, 2012). Of those LECs accepting partial amounts, CenturyLink accepted \$35,098,975, Fairpoint Communications, Inc. accepted \$2,025,075, and Windstream accepted \$653,325. See Letter from Melissa E. Newman, CenturyLink, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012); Letter from Karen Brinkman, Counsel to Fairpoint Communication, Inc., to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 23, 2012); and Letter from Eric N. Einhorn, Windstream, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012),

AT&T, Verizon, and Virgin Islands Telephone Corp. declined their entire allocation. *See* Letter from Robert W. Quinn, Jr., AT&T, to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012); Letter from Kathleen Grillo, Verizon, Inc., to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012); and Letter from Seth Davis, Virgin Islands Telephone Corp., to Marlene H. Dortch, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012).

See Connect America Fund et al., WC Docket No. 10-90 et al., Second Order on Reconsideration, 27 FCC Rcd 4648, 4654, ¶ 20 (2012) ("Second Reconsideration Order").

See e.g., FCC News Release, July 9, 2013, Statement from Chairman Julius Genachowski on Frontier Communications' Connect America Fund Announcement: "Today's announcement by Frontier Communications [to accept CAF Phase I incremental support] represents the beginning of that new deployment: approximately 200,000 unserved rural Americans will get broadband for the first time." FCC News Release, July 23, 2013, Statement from Chairman Julius Genachowski on Fairpoint Communications' Connect America Fund Announcement, "Today's announcement by FairPoint [to accept CAF Phase I incremental support] means that more than 50 towns in Vermont and Maine will

substantially alter the program as proposed in the FNPRM.

The Commission also should recognize that the price cap LECs have provided myriad reasons for rejecting support, some of which have nothing to do with the need to expand the number of areas eligible to be served, to obtain additional support beyond \$775 per location, or to use support to deploy second-mile fiber. AT&T, for instance, stated that it could not "commit to participating in the incremental support program" until it finalizes its rural broadband strategy. AT&T completed that review this past November and concluded that it would not upgrade its rural plant to U-verse technology and instead rely on 4G LTE. AT&T also commented that it declined support because of "the uncertainty as to how participating in this program will affect our continuing efforts to be relieved of outdated legacy obligations, as well as some questions about the potential scope of service obligations that accompany support. Verizon declined support with no explanation, to but its CEO stated at approximately the same time that it was moving to rely on wireless deployments in rural areas to provide broadband service. As for CenturyLink, which accepted approximately 40 percent of its allocation, its

be connected to new broadband, and thousands of previously unserved Americans will get broadband within the next 12 months alone."

See Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory and Chief Privacy Office, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 (July 24, 2012) ("Quinn Letter").

See AT&T Presentation: Laying a Foundation for Future Growth, November 7, 2012 at 41-42.

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See Letter from Kathleen Grillo, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 (July 24, 2012).

See e.g., Statement of Verizon's CEO, Lowell McAdam at the Guggenheim Securities Symposium (June 21, 2012), available at http://www.media-alliance.org/downloads/Verizon_Kill_Copper.pdf ("In [...] areas that are more rural and more sparsely populated, we have got LTE built that will handle all of those services and so we are going to cut the copper off there. We are going to do it over wireless. So I am going to be really shrinking the amount of copper we have out there and then I can focus the investment on that to improve the performance of it.").

waiver petition tied to conditional acceptance of additional funding focused on its claim that census blocks were inaccurately determined to be "served." Only two of the "mainland" carriers – Windstream and Fairpoint – filed waiver petitions arguing that the amount of support per location was insufficient. In sum, there is no consensus among the price cap LECs as to shortcomings with the program, and, consequently, changes to these incremental support rules proposed in the FNPRM geared to address the concerns raised by some carriers are likely to have the unfortunate effect of providing additional and excessive support for other carriers where in fact none is needed. 1

To determine whether price cap LECs in fact need changes in the rules to use incremental support to deploy broadband to unserved locations, ACA examined the pool of eligible lower cost unserved locations in price cap LEC territories. ACA's analysis is based on the geographic and performance data in the National Broadband Map and the CQBAT cost model submitted by the ABC Coalition (price cap LECs), including their proposed definition of lower cost areas where support is not needed.²² As described at length herein, as a result of this analysis, ACA

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See CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (filed June 26, 2012). ACA supports the challenge process proposed by the Commission in the FNPRM. See FNPRM, ¶¶ 13-16.

See Windstream Communications, Inc. Petition for Waiver, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012) ("Windstream Petition") and Fairpoint Communications, Inc. Petition for Waiver, WC Docket Nos. 10-90, 05-337 (filed Sept. 10, 2012).

Moreover, it is important to note that the Commission has already rejected altering the Phase I program's nationwide approach in favor of a carrier-specific approach. *See Second Reconsideration Order*, ¶¶ 19-20. ACA also submits that even where there may be issues with the program, there is insufficient evidence to support the major changes proposed in the FNPRM. Further, it makes no sense given the program's transitional nature for the Commission to expand the objective, make wholesale changes, or create a complex regulatory scheme which would result in substantial new start-up costs and significant oversight from the Commission and involvement from private parties. It also detracts from the development of the Phase II regime.

The ABC Coalition set the high-cost benchmark at \$80 per location per month. Locations with total costs below this level would be lower cost and not supported under their plan. *See Ex Parte* filing of the AT&T, CenturyLink, Fairpoint Communications, Frontier, National Telecommunications Cooperative Association, OPATSCO, United

determined that for several price cap LECs there are more than a sufficient number of lower cost locations that are not served with broadband service at speeds of 768/200 kbps for which they would have a sound commercial rationale to use their allocation of incremental support of \$775 per location. For these LECs, there is no basis for the Commission to alter its rules.

However, for several other price cap LECs, ACA determined they appear to have an insufficient number of lower cost locations that are not served with broadband service at speeds of 768/200 kbps. ACA proposes that these price cap LECs be able to use Phase I incremental support to deploy broadband to locations in areas that do not currently receive 4/1 Mbps broadband service but only after the LEC uses its support to deploy broadband to its remaining lower cost unserved locations with at most 768/200 kbps service. This will ensure that these price cap LECs achieve the program's objective of providing service to their unserved locations most in need of broadband service. ACA's proposed expansion of the eligible locations also will further the Commission's objective of providing an immediate spur to broadband deployment without establishing new and more complex rules. Finally, by requiring lower cost unserved locations with 768/200 kbps to be served first, ACA's approach helps ensure that support is distributed efficiently to each price cap LEC. It would avoid providing these LECs with surplus funds, which they could use for "non-supported" purposes, thereby harming competitive infrastructure deployments, most of which will provide superior broadband service than that mandated by the Commission.

Additionally, with ACA's proposal, since each price cap LEC will now have more than a sufficient number of lower cost unserved locations, the Commission does not need to increase the amount of support per location nor does it need to establish a new second-mile fiber

States Telecom Association, Verizon, Western Telecommunications Alliance, and Windstream, WC Docket No. 10-90 et al., Attachment 1 at 5 (July 29, 2011).

component to the program. In any event, because these two policy proposals provide imprecise estimates of cost and required support and thus distribute support inefficiently, they should be rejected.

As for distribution of "leftover" 2012 Phase I incremental support, the Commission should not add these funds to any 2013 distribution. Rather, the Commission should adopt one of its alternative proposals: either add the amount to Phase II distribution or return the money by lowering the contribution rate paid by consumers. There are two cogent reasons for the Commission to adopt ACA's proposal. First, under Phase II, support will be distributed more efficiently through use of a cost model and a competitive bidding regime. Second, it is most consistent with the statutory dictate that universal service exists to benefit consumers. In other words, if a price cap LEC rejects incremental support, its unserved consumers lose. Whereas, in a Phase II regime, if a price cap LEC does not elect the right of first refusal, the support is then auctioned to a provider that will bring service to these unserved consumers. Of course, in the alternative, the Commission will achieve worthy goals by simply not spending the funds and reducing consumer contributions.

Finally, regardless of whether the Commission amends its Phase I rules, it should clarify in this proceeding the interplay among Phase I incremental support, the Phase I obligation to use frozen legacy support to deploy broadband-capable networks, and Phase II "five-year" support to ensure that price cap LECs cannot "double-dip" in utilizing support for unserved locations from more than one program. The Commission briefly touched on this concern in the Connect America Fund Order when it targeted Phase I incremental support "to provide one-time support," rather than ongoing support." It raises the issue again in part in the FNPRM in regard to the

²³ Connect America Fund Order, n. 227.

second-mile fiber proposal.²⁴ Before awarding additional incremental support, the Commission should ensure that incremental support is only used to build to locations not requiring ongoing support provided pursuant to the Phase II regime. Complicating matters further, unlike in 2012 when price cap LECs had no obligation to deploy broadband to unserved locations, beginning in 2013, they are required to use their frozen legacy support "for building and operating broadband-capable networks."²⁵ ACA recognizes that there are still unresolved issues surrounding this mandate, and the Commission is still determining the support mechanism for Phase II, but it submits that, regardless of whether the Commission modified the incremental support program, it should clarify in this proceeding where and how incremental support, legacy support, and Phase II support are to be used so that it does not permit duplicative support in a location. To the extent that it amends the Phase I program, the Commission should ensure that any changes do not provide opportunities for price cap LECs to "double dip."

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²⁴ See FNPRM, ¶ 28.

Connect America Fund Order, ¶ 149. Recently, price cap LECs met with Commission staff to discuss issues with the obligation to expend frozen legacy support to build and operate broadband-capable networks. See Ex Parte of US Telecom, WC Docket No. 10-90 (Dec. 20, 2012). These carriers suggested that they be able to move this support from high-cost areas where an unsubsidized competitor provides broadband service and use it to build and operate broadband networks in areas where no competitor provides service. ACA supports the termination of support where an unsubsidized competitor provides broadband service. However, the Commission should ensure that any support "transferred" to another area is actually used to build and operate broadband-capable networks to locations in those areas and is only the amount of support required to meet this task. In addition, as ACA stated above, Phase I incremental support should not be awarded until the Commission determines there will be no overlap with locations covered by frozen legacy support.

II. SHOULD THE COMMISSION DECIDE TO INCREASE THE NUMBER OF UNSERVED LOCATIONS WHERE PHASE I INCREMENTAL SUPPORT MAY BE USED, IT SHOULD REQUIRE PRICE CAP LECS TO USE INCREMENTAL SUPPORT TO DEPLOY TO LOWER COST LOCATIONS WITHOUT 768/200 KBPS SERVICE BEFORE PERMITTING THEM TO DEPLOY TO LOWER COST LOCATIONS WITHOUT 4/1 MBPS SERVICE; THERE IS NO NEED IN EITHER INSTANCE TO INCREASE THE AMOUNT OF SUPPORT (\$775) PER LOCATION

The Phase I incremental support program was "targeted to bring high-speed Internet access to consumers who lacked any broadband access at all," that is, those who did not have access to fixed terrestrial broadband with a minimum speed of 768/200 kbps.²⁶ Further, the Commission designed the program to reach in these areas "a significant number of relatively low-cost locations."²⁷ In the FNPRM, the Commission proposes to increase the minimum speed to 4/1 Mbps to enable more consumers to "take advantage of modern Internet applications."²⁸ The result of this proposal will be to increase the pool of locations where support may be used.²⁹ To determine whether the eligible areas need to be expanded to meet the objective of the Phase I incremental support program, ACA has gathered location data for each of the major domestic price cap LECs to estimate whether they have a sufficient number of lower cost unserved locations where they could use incremental support at the level established in the *Connect*

²⁶ FNPRM, ¶ 10.

Second Reconsideration Order, ¶ 20. See also, Connect America Fund Order, n. 227 ("Commission staff focused on the modeled costs in the ABC plan cost model for areas where the cost to provide service is lower.").

²⁸ FNPRM, ¶¶ 11-12.

Because the Commission's rules mandate that these LECs use one-third of their frozen legacy support in 2013 to build and operate broadband-capable networks, even if the areas where Phase I incremental support are not enlarged, a great many consumers in areas served by the price cap LECs that do not receive 4/1 Mbps service will begin to receive upgraded broadband service this year. *See Connect America Fund Order*, ¶ 149. In addition, as ACA notes in these comments, prior to awarding Phase I incremental support, the Commission should ensure that price cap LECs would not use frozen legacy support to deploy broadband to these same unserved locations.

America Fund Order -- \$775 per location.³⁰ The estimates are provided in the following chart:

	AT&T	Century- Link	Fairpoint	Frontier	Wind- stream	Verizon	Comments
Locations <4/1 Mbps	2,200K	959K	99K	1,100K	500K	685K	Total cable and telco unserved locations from CQBAT
Locations <4/1 Mbps Below ABC Plan \$80 Floor	1,100K	306K	40K	468K	184K	382K	From CQBAT
Locations < 768/200 kbps	395K	173K	18K	195K	90K	123K	Assumes that 18% of unserved locations have speeds <768/200
Locations < 768/200 kbps Below ABC Plan \$80 Floor	196K	55K	7K	84K	33K	69K	Assumes locations <768/200 are equally distributed among unserved locations
CAF I Eligible Locations	62K	116K	6K	93K	78K	25K	Based on CAF I funding allocation divided by \$775
Locations <768/200 kbps Below ABC Plan \$80 Floor as a % of CAF I Eligible Locations	317%	48%	114%	91%	43%	270%	

Before discussing results from ACA's analysis, it is important to understand the data sources and assumptions underlying the estimates:

- ACA relies on data from the CQBAT model developed by the price cap LEC's ABC Coalition to determine the overall number of unserved locations (without 4/1 Mbps broadband) for each of these LECs.³¹
- To determine lower cost locations, ACA uses the benchmark proposed in the

For the minimum number of unserved locations to which each price cap LEC must deploy, ACA uses the amounts calculated by the Commission for 2012 awards of incremental support.

The location information in the CQBAT model is derived from the National Broadband Map and Warren Media blend.

ABC Plan by the ABC Coalition of \$80 per line per month.³² Below this benchmark, the ABC Coalition does not propose that the price cap LECs receive any Phase II support to deploy broadband to unserved locations. ACA thus believes it is reasonable to conclude that for unserved locations below the benchmark there is a sufficient commercial incentive for any broadband provider to serve these locations, and thus particularly an incentive for a price cap LEC to accept incremental support of \$775 per location to deploy broadband. This is particularly the case because the CQBAT model shows that in lower cost locations: (1) the average costs are approximately 25% below the median cost of providing broadband service to unserved locations, and (2) there is much less differentiation in the deployment cost for each price cap LEC.³³ ACA relies on the data from the CQBAT model to determine the overall number of lower cost unserved locations <4/1 Mbps, that is, below the ABC Plan \$80 floor. ACA recognizes that the Wireline Competition Bureau is refining its model and the underlying data supporting the model, and suggests that the Bureau independently calculate the number of lower cost unserved locations using the refined model and data

• To determine the number of lower speed unserved locations –768/200 kbps – for each price cap LEC, ACA used broadband speed data from the December 2011 National Broadband Map. To simplify the analysis, ACA sampled areas in two large states, Texas and Pennsylvania, to serve as representative geographies. These states were chosen because (1) they each contain a mix of rural and urban locations, and (2) the price cap LECs have a considerable presence across each of them. ACA found that these lower speed 768/200 kbps locations represented 18 percent of the unserved 4/1 Mbps locations in the sampled states. ACA recognizes that the Commission may wish to determine the number of 768/200 kbps areas for each carrier using its own calculations because (1) there may be variation in the proportion of lower speed locations between the different price cap LECs and (2) the National Broadband Map data used was from December 2011, which does not account for new locations that were served through either CAF I support in 2012 or other investments made by the LECs.

From its analysis, ACA determined that several price cap LECs – AT&T, Fairpoint, and

ACA emphasizes that the Commission should only permit incremental support to be used in lower cost locations since (1) this was the original objective of the program and (2) it will avoid "double-dipping" with the provision of Phase II support.

For the price cap LECs, the CQBAT model shows that deployment costs for each LEC begin to diverge at the median cost of providing broadband service at 4/1 Mbps and increasingly diverge in the highest cost unserved areas. This is to be expected since costs increase dramatically in the least dense areas and some price cap LECs have a disproportionate number of these areas. This, however, should not be a concern for the incremental support program with the amendment proposed by ACA since for several price cap LECs there are more than a sufficient number of lower cost 768/200 kbps locations available and for the other LECs there are a sufficient number of lower cost locations without 4/1 Mbps broadband service.

Verizon – appear to have more than a sufficient number of lower cost unserved locations with broadband service at speeds of 768/200 kbps for which they would have a sufficient commercial incentive to use their allocation of incremental support of \$775 per location. For these LECs, there is no basis for the Commission to alter its rules.

ACA found that for three price cap LECs – CenturyLink, Frontier, and Windstream – the number of locations where it could use incremental support of \$775 per location exceeded the number of lower cost unserved locations without 768/200 kbps broadband service. Frontier, in particular, may have significantly fewer of these locations because it accepted its entire incremental support allotment in 2012. Thus, for these three price cap LECs, there is a rationale for expanding the pool of eligible unserved locations to those without 4/1 Mbps broadband service. However, any expansion needs to be conditioned on a price cap LEC first deploying broadband to all (or virtually all) of its lower cost unserved locations not receiving 768/200 kbps broadband service. Without this condition, the Commission's original objective of bringing service to those "most in need" locations is unlikely to be achieved. In this regard, ACA notes that assuming arguendo that Windstream has many higher-cost locations with broadband service of less than 768/200 kbps, its analysis shows that the LEC still has lower-cost locations where \$775 per location should provide sufficient incentive to deploy broadband.³⁴ The Commission should require Windstream to build to these lower-cost locations before being permitted to access support to build to locations without 4/1 Mpbs broadband service.

There is an additional reason for requiring that price cap LECs build to the existing universe of lower cost locations prior to expanding the universe of locations that may be eligible

³⁴ As discussed herein, ACA's analysis of relative cost is based on the ABC Coalition's cost model and use of the National Broadband Map. Should any price cap LEC disagree with ACA's calculations, it welcomes submission by them of sufficient information to counter the conclusions set forth herein.

for Phase I funding – minimizing the opportunity for these LECs to receive a windfall.

According to the CQBAT model, there are a great many lower cost unserved locations without 4/1 Mbps service that would require substantially less support than lower cost unserved locations without 768/200 kbps broadband. For instance, ACA's analysis shows that AT&T has more than 1 million lower cost locations without 4/1 Mbps service. More than 89% of these have estimated costs that are below the overall median cost for providing broadband service to unserved locations, and more than 9% of these have estimated costs that are less than one-half the median cost for providing broadband service to unserved locations. The other LECs have similar cost characteristics, as seen in the following table:

	AT&T	Century- Link	Fairpoint	Frontier	Windstream	Verizon
Locations < 4/1 Mbps Below ABC Plan \$80 Floor	1,100K	306K	40K	468K	184K	382K
Percent with Costs Below the Unserved Median Cost	89%	87%	80%	87%	89%	91%
Percent with Costs Below half the Unserved Median Cost	9%	16%	10%	8%	9%	16%

In other words, if the Commission expands the pool of eligible areas to those locations without 4/1 Mbps, then the average cost of serving its lowest cost areas would be lower than the average cost of serving its lowest cost areas that are without 768/200 Kbps. In this instance, by expanding the pool of eligible areas, the Commission would be allowing them to take the same amount of money but spend less of it to meet the minimum performance requirements because it could be spread among a larger population of lower cost locations. Thus, ACA's condition on use of support prevents price cap LECs, especially those that did not accept incremental support

in 2012, from receiving a windfall.

ACA's analysis demonstrates that for each price cap LEC there is more than a sufficient number of lower cost unserved 4/1 Mbps locations to accommodate the incremental support provided. Therefore, there is no need to increase the amount of support beyond the amount adopted in the *Connect America Fund Order* of \$775 per location. In fact, the Commission determined that in this expanded pool of locations, as discussed above, there are many locations that require only a fraction of that support amount.³⁵ Again, ACA suggests that the Commission use its cost model to confirm this finding. As a result, ACA supports the Commission's "third proposal" to continue the use the current metric to provide support.³⁶

As noted above, the Commission's "second proposal" to link support to estimated deployment costs in an area is not needed.³⁷ Moreover, it too is imprecise, especially in comparison to the use of the Phase II cost model – and it creates new levels of complexity – both in terms of the initial calculation and oversight – which would require the Commission, price cap LECs, and competitive providers to expend significant resources all for an interim program. Such an approach runs afoul of the Commission's intent that the program use a "simplified, interim approach." In sum, the Commission should refrain from adopting this approach. ³⁹

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³⁵ See Connect America Fund Order, ¶ 142, n. 227.

³⁶ See FNPRM, ¶ 35.

³⁷ See FNPRM, ¶¶ 29-34.

ACA's proposal would satisfy the Commission's aim that the program use a "simplified, interim approach." *Connect America Fund Order*, ¶134.

If the Commission determines there is a need to alter the current unserved location metric, ACA suggests the Commission consider holding a reverse auction among the price cap LECs. The Commission has already demonstrated in the Mobility Phase I auction that a reverse auction process can successfully determine the most efficient amount of support per area. Further, a reverse auction would be relatively straightforward since the locations eligible for support would be known.

III. BECAUSE OF THE GREAT VARIANCE IN SECOND MILE FIBER COSTS, ANY ACTION TO AWARD SUPPORT ON THIS BASIS WOULD BE ARBITRARY; IN ADDITION, THE PROVISION OF SECOND MILE SUPPORT WOULD JEOPARDIZE THE BUSINESS CASE FOR PRIVATE SECTOR BROADBAND DEPLOYMENTS

In the FNPRM, the Commission seeks comment on a series of proposals to enable price cap LECs to use Phase I incremental support to build second-mile fiber. At the heart of these proposals is the development of a specific metric based on a defined dollar amount per mile of fiber deployed and a requirement to connect to a minimum number of unserved locations per mile. For the cost per mile metric, the Commission cites Windstream's proposal that it could deploy second-mile fiber in high-cost rural areas with a subsidy of \$35,784 per mile. Windstream bases this support on an estimated deployment cost of \$43,036 per mile, and it proposes to contribute \$7,252 per mile (effectively a 17 percent matching contribution).

Using the CQBAT cost model, ACA sought to determine whether this model could provide an average cost per fiber mile. It cannot. In fact, the model demonstrates that the variance in cost is great due to many factors. For instance, in the CQBAT model:

Material costs can vary by as much as 22 times depending the size of the fiber cable; Buried fiber costs are 2 times aerial costs; and

The standard deviation of the regional cost adjustments (for such factors as labor costs, soil density and plant mix) is 11 percent.

This great variance also can be seen in the Fiber-to-the-Home Council's 2009 submission to the Commission to assist with modeling for the National Broadband Plan.⁴³ The filing notes that cable placement is often dictated by conditions, such as the availability of existing pathways, soil

⁴⁰ See FNPRM, ¶ 18.

⁴¹ *See id.*, ¶ 19.

See Windstream Petition at n.38.

See Ex Parte Presentation of Fiber-to-the-Home Council, GN Docket No. 09-51 (Oct. 14, 2009).

conditions, and location of easements. Further, it describes a host of other factors affecting cost, including:

Labor costs for cable installation range from \$2.50-\$3.75/foot for a new strand of aerial deployment to \$10/foot for a directional bore to potentially as high as \$30/foot for a separate trench.

Optical fiber cable costs range from \$0.30/foot for a 12 single armor fiber cable to \$3.38/foot for a 432 fiber cable.

Consequently, assuming arguendo that Windstream's cost is a reasonable industry-wide amount, because of the large number of variables that can significantly affect cost for each build by each price cap LEC, use of the shorthand metric of average cost per fiber mile would not result in the efficient distribution of support. As a result, price cap LECs would accept support based on the "average" and deploy where the costs are much lower than average, for instance, in areas where fiber can be deployed aerially. This would provide price cap LECs with a surplus, which they could use for "non-support" purposes. As such, the Commission should not adopt this metric.

The second-mile proposal also flounders for other reasons. First, on the critical issue of the amount of matching support that must be provided by the LEC, the Commission has no basis to determine that the average amount of matching support suggested by Windstream is justifiable and would ensure support is distributed efficiently. The Commission first indirectly inquires about this issue when it discusses whether Windstream's proposed amount of support per mile is reasonable since this amount is based on a 17 percent match by Windstream.⁴⁴ Later in the FNPRM, the Commission directly raises the matching funding issue.⁴⁵ But, Windstream provides no evidence to support the 17 percent match, nor is there support provided by any other party. Moreover, in a prior filing, Windstream offered to "match the first tranche of CAF Phase I

⁴⁴ See Windstream Petition, n. 38.

⁴⁵ See FNRPM, ¶ 27.

funding with an amount equal to approximately 35 percent of second-mile fiber project costs."⁴⁶ The Commission may be tempted to rely on the Broadband Technology Opportunities Program's 20 percent match, which was the minimum generally required, but it is important to understand that an applicant for this program scored higher by proposing to contribute a greater percentage match. Moreover, this program used a competitive procurement process in which applicants provided specific information on the areas to be funded and the costs for deploying broadband (including middle mile fiber) in those specific areas. In other words, they could not receive support and then choose to build where the cost to build would be cheapest to them. In addition, the applicants competed on many different factors, including the consumer benefit of the build, all of which may have factored in to the justification for a lower match. In sum, there is a paucity of evidence in the record on which to base an efficient match. Of course, the most efficient solution would be to hold a reverse auction.

Another issue with the second mile proposal is that it would permit deployments in areas with served locations. The Commission attempts to strike a balance here and address this concern through various proposals, but each is inadequate. Requiring the price cap LEC to serve on average over the entirety of the fiber deployed to a minimum number of unserved locations may appear promising, but there is a significant cost variance around the average. Thus, the Commission would need to ensure the LECs do not select the most advantageous miles.

Requiring the price cap LECs to certify they have selected the fiber routes with the highest number of unserved locations per mile is more acceptable. However, it relies on the

⁴⁶ See Letter from Michael Rhoda, Senior Vice President, Government Affairs, Windstream to Chairman Genachowksi and Commissioners McDowell and Clyburn, WC Docket No. 10-90 et al. at A-2 (Apr. 16, 2012).

Commission's ability to monitor and enforce the requirement. While the Commission may be diligent, it has no proven mechanism to ensure adequate oversight.

Finally, the Commission seeks comment on whether fiber built with Phase I support should be excluded from support under Phase II if the Commission uses a greenfield scenario. ACA submits that this issue also arises in dealing with frozen legacy support since the price cap LECs are to begin using this support to build and operate broadband-capable plant this year. Regardless of the context, as discussed further below, a price cap LEC should not be able to "double dip" in receiving support. If second-mile fiber is built with incremental support, a price cap LEC should receive at most support for ongoing maintenance, which should be minimal, in Phase II.

IV. PHASE I INCREMENTAL SUPPORT NOT ACCEPTED BY PRICE CAP LECS IN 2012 SHOULD BE EITHER ADDED TO THE PHASE II BUDGET OR USED TO REDUCE THE CONTRIBUTION BURDEN ON CONSUMERS

The Commission proposes to add incremental support not accepted by the price cap LECs in 2012 (approximately \$185 million) to the amount to be distributed in 2013 because it would "dramatically increase the impact of the next round of Phase I incremental support" and raises different approaches for allocating the total amount of support. The Commission also seeks comment on alternative approaches: applying the leftover amount to Phase II funding or using it to reduce the amount contributors need to pay. As discussed below, ACA believes

See FNRPM, ¶ 28. ACA notes that this issue only arises to the extent that price cap LECs use incremental support in areas that would be eligible for Phase II support, that is higher cost areas. ACA believes that this scenario will be less likely to occur if the Commission adopts ACA's proposal to limit any change to the program to allowing certain price cap LECs to build in areas without 4/1 Mbps and not increase the amount of incremental support

⁴⁸ FNPRM, ¶¶ 36-38.

⁴⁹ See id., ¶¶ 41-44.

there is sufficient evidence to demonstrate that the Commission's proposal will not maximize the efficient distribution of support and may not accelerate the deployment of broadband to the most unserved locations. As such, ACA supports either of the Commission's alternative approaches.⁵⁰

In the context of how best to distribute CAF money to meet the goals of the overall program, the Commission's proposal to add leftover support to this year's support falls far short of maximizing the efficient distribution of support. As the Commission recognizes, Phase II support distribution will be more efficient than Phase I distribution either because the cost model will more accurately determine the cost of deployment or because a competitive bidding regime will be employed. Since Phase II is likely to begin in less than one year, there is little reason to settle for an inferior distribution mechanism.

In addition, the Commission's proposal may not in fact have a dramatic impact on the deployment of broadband to unserved locations. That is because it ignores the potential (or even likelihood) that many price cap LECs will again reject support, in which case their unserved consumers would be directly harmed. In contrast, under Phase II, unserved consumers in price cap LEC territories would receive broadband either from the LEC should it make the election or from the provider winning a reverse auction.

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As the Commission has stated, the purpose of Phase I incremental support was to spur the deployment of broadband to the most unserved locations – not give price cap LECs an entitlement to the support. The Commission's objective is firmly grounded in the statute: "The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers." *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000). Moreover, the Commission contemplated that incremental support "would likely be declined" and "may be used in other ways to advance our broadband objectives," including in Phase II. *Second Reconsideration Order*, ¶ 20 (citing *Connect America Fund Order*, ¶ 138, n. 45.) In other words, the Commission was correct in its original intent for awarding incremental support, and the only issue is whether adding this leftover support to this year's amount would best achieve its objective of bringing broadband to the greatest amount of unserved locations most efficiently.

In sum, the Commission would maximize its objectives by including leftover incremental support in Phase II.

V. THE COMMISSION SHOULD IMPROVE ITS OVERSIGHT AND ACCOUNTABILITY FOR PHASE I INCREMENTAL SUPPORT

Under the Commission's current rules, LECs accepting support only need to identify by larger areas (census blocks and wire centers) where they will use incremental support. Moreover, these filings do not bind the LEC to using support in those areas.⁵¹ Rather, the Commission relies on the milestone certifications, which need not be location specific, and responses to Commission inquiries, which may be location specific.⁵² The Commission proposes in the FNPRM to adopt new reporting obligations requiring price cap LECs to provide, with its two and three year milestone certifications, specific data on the locations where it will build broadband counting towards its deployment requirement.⁵³ It also proposes to clarify that if a LEC intends to deploy to areas other than those initially identified, it may, but is not required to, file an update of previous deployment plans.⁵⁴ ACA appreciates these added reporting obligations believes they are insufficient.

In an ex parte filing last year. 55 ACA argued that the Commission could not ensure support was used properly unless it had baseline information about locations that were served and unserved and locations where the price cap LEC intended to use incremental support to

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⁵¹ See 47 C.F.R. § 54.312(b)(3).

⁵² See 47 C.F.R. § 54.317(b).

⁵³ FNPRM, ¶ 47.

⁵⁵ See Ex Parte Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (Oct. 24, 2012).

deploy broadband. It asked the Commission to require that price cap LECs accepting support to report for each census block where support will be used:

- The specific locations where broadband service meeting the 768/200 kbps threshold is currently offered (served) and those locations where it is not currently offered (unserved);
- The specific locations where the price cap LEC is to deploy broadband pursuant to and merger conditions;
- The specific unserved locations where support will be used to deploy broadband service. 56

ACA continues to believe without this baseline information, the Commission will not be able to adequately track whether and how incremental support is used for new broadband service to unserved locations. In addition, it does not believe collection of this information imposes an undue burden on carriers receiving millions of dollars of government (consumer) funding. It therefore urges the Commission to adopt them.

VI. PRIOR TO MAKING ANY AMENDMENTS TO THE PHASE I RULES THE COMMISSION SHOULD ENSURE THE PRICE CAP LECS DO NOT RECEIVE "REDUNDANT" SUPPORT

In the *Connect America Fund Order*, the Commission expressed concern that universal service support be spent prudently and efficiently.⁵⁷ This concern is raised again in the FNPRM in regard to the second-mile fiber proposal – "excluding Phase I fiber [from the greenfield scenario of the Phase II cost model] would avoid the issue of providing double support."⁵⁸ Given that under the Commission's new support regime, price cap LECs are initially eligible to draw support pursuant to a Phase I legacy support program and a Phase I incremental support

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Should the Commission decide to provide support for second-mile fiber, it should collect similar baseline information about where fiber is deployed today and where the LEC will use support to deploy new fiber.

⁵⁷ See Connect America Fund Order, ¶ 7.

⁵⁸ FNPRM, ¶ 28.

program, and a Phase II program with a right of first refusal, the Commission needs to establish rules that prevent the award of double support and institute accountability measures to enforce these rules. In addition, ACA believes it is essential to do so now. More specifically, the Commission should ensure either that Phase I incremental support is only used to build to locations not requiring ongoing support provided pursuant to the Phase II regime or that Phase II does not provide support for deployments made with Phase I support.⁵⁹ In addition, the Commission should ensure that locations cannot be supported both by Phase I incremental and frozen legacy support. This issue arises because, unlike in 2012 when price cap LECs had no obligation to deploy broadband to unserved locations, beginning in 2013, they are required to use their frozen legacy support for broadband-capable networks. While there remain unresolved issues surrounding use of legacy support for the broadband mandate, the Commission should first clarify where and how both incremental and legacy support are to be used so that it does not award duplicative support.

VI. **CONCLUSION**

The Commission's Phase I incremental support program occupies a niche in the overall CAF support regime. It was designed as a limited, transitional program to jumpstart broadband to those locations most in need of service. As the Commission has determined, it has been a success. Further, as ACA demonstrates herein, the only change the Commission may need to make to this program is for certain price cap LECs to expand the eligible areas where support may be used. By no means does the Commission need to increase the amount of support per location or support the deployment of second-mile fiber. Finally, prior to moving forward, it is

⁵⁹ Protecting against the provision of "double support" is another reason, albeit minor, for why the Commission should not adopt a greenfield scenario for the Phase II cost model. ACA has provided numerous other reasons in other filings in WC Docket Nos. 10-90 and 05-337 why the Commission should not adopt a greenfield model.

important for the Commission to clarify the uses of its Phase I and Phase II support programs to ensure it does not award duplicative support.

Respectfully submitted,

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